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Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ex Parte Filing in Cases WT 99-217; CC96-98

Dear Chairman Kennard:

I am writing to urge the FCC not to adopt the rule proposed in these cases allowing any phone company to serve any tenant of a building and to place their antenna on the building roof.

In some states 70 or more new phone companies have been certificated to provide service. Adding the wireless phone companies you may have over 100 companies being allowed to place their wires in a building, and their antennas on the roof, without the landlord's or owners permission.

The FCC lacks the authority to do this. It would violate basic property rights-a landlord, city or condominium has the right to control who comes on their property. Congress did not give the FCC the authority to condemn space for 100 phone companies in every building in the country.

The FCC cannot preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment you may not preempt.

For example, building codes are imposed in part for engineering related safety reasons. These vary by region, weather patterns and building type-such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice. If antennas are too heavy or too high, roof failures may occur. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns-which we do every day, with success.

5291 E. 60th Ave
Commerce City, CO 80022

Tel: 303-289-3612
Fax: 303-289-3688

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The application of zoning principles is highly dependent on local conditions. These vary greatly state by state, from municipality to municipality and within municipalities. We have successfully applied these principles and balanced competing concerns for eighty years. Zoning has not unnecessarily impeded technology or the development of our economy, nor will it here. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems on such a massive scale with the 38,000 units of local government in the U.S. as to warrant Federal action.

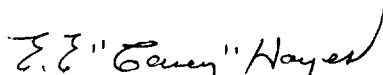
On rights of way, local management of them is essential to protect the public health, safety and welfare. Congress has specifically prohibited you from acting in this area.

We believe the telephone providers' complaints about rights-of-way management and fees are overblown, as indicated by the small number of court cases filed. With 38,000 municipalities nationwide and thousands of phone companies the number of cases shows that the system is working, not that it is broken.

Finally, we are surprised that you suggest that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to affect state or local taxes any more than it can affect Federal taxes.

For these reasons please reject the proposed rule and take no action on preemption of local authority on rights of way and taxes.

Very Truly Yours,


E.E. "Casey" Hayes
Honorable Mayor
City of Commerce City

cc:

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mr. Jeffery Steinberg
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ms. Barrie Tabin
Legislative Counsel
National League of Cities
1301 Pennsylvania Ave., N.W.
6th Floor
Washington, DC 20004

Mr. Robert Fogel
Associate Legislative Director
National Association of Counties
440 First Street, 8th Floor
Washington, DC 20001

Ms. Dianna DeGette
1404 Longworth
House Office Building
Washington, DC 20515

Senator Ben Nighthorse Campbell
380 Russell
Senate Office Building
Washington, DC 20510

Mr. Joel Tauenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

International Transcription Services
445 12th Street SW
Room CY-B402
Washington, DC 20554

Mr. Kevin McCarty
Assistant Executive Director
U.S. Conference of Mayors
1620 I Street
Fourth Floor
Washington, DC 20006

Ms. Elizabeth Beaty
Executive Director
NATO
1650 Tysons Road
Suite 200
McLean, VA 22102

Mr. Thomas Frost
Vice President, Engineering Services
BOCA International
4051 West Flossmoor Road
Country Club Hills, IL 60478

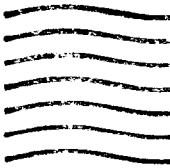
Kenneth S. Fellman, Esq.
Kissinger and Fellman, P.C.
3773 Cherry Creek North Drive
Suite 900
Denver, CO 80209

Senator A. Wayne Allard
716 Hart
Senate Office Building
Washington, DC 20510



5291 E. 60th Ave.
Commerce City, CO 80022

Manager



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Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

